80-752

Supreme Court, U. S.
FILED
NOV 7 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

FALL TERM 1980

CLAYTON W. CARNEY PETITIONER AND PLAINTIFF vs THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS: AND ROGER WILLIAMS, KENNETH SHUE, CHARLES CAMP, DONALD OGREN, GORDON GLENN, PIERSON PEDLEY D. DeLONG, DOES 1 THROUGH X INCLUSIVE RESPONDENTS-DEFENDANTS	) REVIEW OF THE) APPELLATE) COURT OF) CALIFORNIA) SECOND DISTRICT) 2nd. CIV.) NO. 56795

PETITION FOR WRIT OF CERTIORARI

CLAYTON W. CARNEY
ATTORNEY IN PROPIA PERSONA
1710 CONNECTICUT AVENUE N.W.
WASHINGTON, D. C. 20009
(202) 387-6060
PETITIONER
FOR RESPONDENT
DEPARTMENT OF TRANSPOTATION
LEGAL DIVISION
120 SOUTH SPRING STREET
SUITE 500
LOS ANGELES, CALIFORNIA 90012
(213) 620-5000

TABLE OF AUTHORITIES

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court of Appeals correctly held that the Trial Judge decided the question of law correctly by determining that Government Code 818.8 was directly in point and was a bar to Plaintiff's cause of action against the Department of Transpotation "

2. Whether the Court of Appeals , itself a beneficiary of establishing the permanence of the California Tort Clains Act can legally, morally, and constitutionally, act as a judicial review, in the affirmance of the Trial Judges summary disposition of the PetitionersComplaint for failure to state a Cause of Action under California Code of Civil Procedure 430. 10 (e)

3. Whether there exists a conspiracy, as precisely described in the attached article from the Washington Post of Friday , August 22, 1980, " Judges , Lawyers Are the Ruling Class in U. S. Society" by Alain Clement Le Monde, Paris and whether a Congressional Inquiry or Contitutional Convention is in order to address said allegation.

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QUESTIONS PRESENTED FOR REVIEW

4. Whether there is a conspiracy on the part of the California Judiciary and the California State Bar to deny the Citizens of California the Constitutional Rights as provided under the California Constitution,1879, Article 1, Sec. 7, " the right of trial by jury shall be secured to all and remain inviolate", by directing their efforts , skills, to their perpetuation as a ruling class., by implementing summary statutes.

5. Whether the California Tort Claims Act of 1963 is a device to perpetuate the Lawyers, Judges and Public Employees of the State of California as an elitist group , and said act is unconstitutional under the Fourteenth Amendment of the United States Constitution.

CONSTITUTIONAL PROVISIONS AND STATUTES

The Applicable constitutional provisions and statutes are listed below. They are set forth also in the index.

UNITED STATES CONSTITUTION , SEVENTH AMENDMENT
FOURTEENTH AMENDMENT
CALIFORNIA CONSTITUTION , ARTICLE 1, SEC. 7.
CALIFORNIA CODE OF CIVIL PROCEDURE 430. 10(e)
CALIFORNIA TORT CLAIMS ACT OF 1963 en toto.

JURISDICTIONAL STATEMENT

By this petition , Petitioner seeks a review of a decision by the California Appellate Court, Second Appellate District, filed on the 12th day of June 1980(Attached) affirming the Judgment of Dismissal of the Los Angeles County Superior Court on January 31 ,1979.

Because the Supreme Court of California denied Petitioners request for Hearing on August 6, 1980 (Attached), the United States Supreme Court has jurisdiction to review by Writ of Certiorari according to Title 28 , Section 1257 (3) " where the validity of a treaty or statute of the United States is drawn in question on the qround of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution , treaties or statutes of , or commission held or authority exercised under the United States".

STATEMENT OF THE CASE

The Petitioners Complaint , filed on October 17, 1975 , alleged Fraud on the part of Respondent State of California, Department of Transportation named employees Roger Williams, Kenneth Shue, Charles Camp, Donald Ogren, Gordon Glenn, Pierson Pedley, D. De Long , Does 1 through X as a result of a prelude to renting income properties by the Petitioner.

Said Fraud arose when Petitioners had a number of income properties, on which Petitioners payment to the Respondent totaled approximately $6500 per month, and Respondent employees fraudulently, and with malice, and under direction of the Legal Division of the Respondent, and without Due Process of Law, conspired and did put Petitioner out of business at subject properties.

Said Respondent Legal Division has acted as a pilot group for the 111,000 member California State Employees Association , and John B. Matheny , president of said association , and counsel of Respondent , while on Respondent payroll , continued a scheme to oblige the

taxpayers of California to date approximating 30 Billion, $30,000,000,000.00, in employee benefits and perpetuating the establishment of this elitist group, and denying the citizens of California their Constitutional Rights as a matter of practice and policy in furtherance of said scheme and conspiracy.

The California Tort Claims Act of 1963 only purpose has been to entrench this group, the California State Employees Association, and Respondent Legal Counsel, rather than upholding the Constitution as is their pledge and oath as members of the State Bar, has sought only their own selfish interest and the furtherance of said scheme to the detriment of the Citizens of California.

NECESSITY FOR CERTIORARI

This Honorable Court, THE UNITED STATES SUPREME COURT, is the one Court designated by the United States Constitution by name in Article III, Section 1, " the Judicial Power of the United States, shall be vested in one Supreme Court"

In the Rules of the Supreme Court of the United States effective as of June 30, 1980, there is repeated distinction of " Members of the Supreme Court Bar" over other American Citizens , if this Court renders distinction to such a class and craft, and if their is the establishment of an elitist or ruling class it must not be subtle but as a designated court of supremacy , it must be examined in the intent of Founding Fathers in their construction of the Constitution . There are really four branches of Government in this Country, the Press being the Fourth, and the Petitioner submits the article " The Burgeoning of the Bench" by James J. Kilpatrick in the Los Angeles Times on October 22, 1980 as Exhibit A , which is relevant to the Petitioners point. For all the people, including Petitioner, not on a Government payroll,

this Supreme Court would render a service to appraise and comment by granting Certiorari in this case, as to the validity of the Tort Claims Act of 1963 , and redefining the Citizens Constitutional Rights as provided in the United States Constitution , in fending Off Government Employees while living in the United States of America.

The Petitioners ability to secure the rights guaranteed him by the Constitution of the United States rests upon review of this Court.

In a larger sense, review would be a stilling, the beginning of the stilling , that the American Judicial Process , is in conformity with theinfent of the Founding Fathers of this Country, and a model for the Free World. Wherefore , Petitioner respectfully prays that this court grant Petitioners request for a Writ of Certiorari.

CLAYTON W. CARNEY

LOS ANGELES, CALIFORNIA

NOVEMBER 4, 1980.

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

AUG 6 1980

I have this day filed Order

HEARING DENIED

In re: 2 Civ. *No.* 56795

Carney

vs.

State of California

Respectfully,

Clerk

72076-877 7-79 4M OSP

NOT FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CLAYTON W. CARNEY, Plaintiff and Appellant, v. THE STATE OF CALIFORNIA, Department of transportation, etc., et al., Defendant and Appellant.	2 Civ. No. 56795 (LA Super.Ct.No. C 139524)

JUN 12 1980

Plaintiff and appellant Clayton W. Carney appeals from a judgment of dismissal after the People of the State of California's (acting by and through the Department of Transportation) demurrer to the complaint was sustained without leave to amend. Plaintiff has acted in pro per. throughout the entire proceedings.

Plaintiff's cause of action is framed as a tort action for deceit. Paragraph 4 of his complaint states: "On April 13, 1970, the Defendant Glenn and Pedley made material misrepresentations to Plaintiff which they knew to be false and fraudulenlt,. [sic] tha fraudulent misrepresentations were made to induce the Plaintiff to act in reliance thereon, the Plaintiff reasonably believed the fraudulent representations to be true and the Plaintiff suffered great financial loss thereby."

The complaint then continues for seven more pages with evidentiary facts regarding leased properties of the Department of Tansportation that he apparently subleased and rented to lower income groups. In one of these allegations plaintiff states: "The Plaintiff had leased properties from the Defendants, . . . On or about February 26, 1974, with no notice of communication whatsoever to the Plaintiff the Defendants, Shue, Camp, Ogren entered upon these properties and advised resident tenants that Plaintiff's lease had been

cancelled and to make no payment of rent to Plaintiff. . . ." There is also the allegation that plaintiff leased the properties involved based on the original fraudulent misrepresentation made by defendants.

Plaintiff also alleges that he presented his claims to the state Board of Control as legally required but such claims were denied.

Plaintiff argues on appeal that he has stated a cause of action for fraud and that determination of this issue is a question of fact for a judge or jury and cannot be summarily dismissed by a judge who determines that he failed to state a cause of action under Code of Civil Procedure section 430.10, subdivision (e). He claims that such a determination deprives him of procedural due process of law under the Constitution.

Government Code section 818.8 provides: "A public entity is not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional." (Emphasis added.)

Although numerous individuals were named in the complaint, along with the Department of Transportation, these other defendants were not served. The Department of Transportation was the only party served and the demurrer was made and sustained as to it only. We therefore are concerned only with whether plaintiff has stated a cause of action against the Department of Transportation.

The nature and purpose of a demurrer is to test the sufficiency of the complaint, and only raises questions of law. If the complaint, on its face, demonstrates that the law denies plaintiff a cause of action this fact can be raised by a demurrer to the complaint. A judge then considers the applicable law cited in the demurrer. If it is controlling, the demurrer must be sustained and a judgment of dismissal follows. Here, the trial judge decided the question of law correctly by determining that Government Code section 818.8 was

directly in point and was a bar to plaintiff's cause of action against the Department of Transportation. The section clearly states the department cannot be liable for the misrepresentations of its employees.

The judgment of dismissal is affirmed.

NOT FOR PUBLICATION.

HASTINGS, J.

We concur:

STEPHENS, J.

ASHBY, J.

Leon Savitch, Judge.
Superior Court of Los Angeles California.

Clayton W. Carney, in pro. per., for Plaintiff and Defendant.

Richard G. Rypinski, Joseph A. Montoya, Robert L. Meyer, and John J. Countain for Defendant and Respondent.

Judges Have a Power Unimagined by the Founding Fathers

By JAMES J. KILPATRICK

Ronald Reagan promised the other day that given a chance, he would name a woman among his first nominations to the U.S. Supreme Court. The pledge earned him no Brownie points with Eleanor Smeal, the starchy head of the National Organization for Women; she sniffed that Reagan is "anti-woman" anyhow. But the statement served to revive discussion of Presidents and federal judges.

We ought to think realistically about these matters. Once upon a time the federal judiciary was perceived, in Alexander Hamilton's phrase, as "beyond comparison the weakest of the three departments of power." That innocent conception vanished long ago. In recent years our society has become ever more addicted to litigation, and in this same period the Congress has created even more issues to litigate about. Federal judges have assumed powers—and they have exercised those powers—in ways that Hamilton could never have foreseen.

Yet it is a curious thing, as Sen. Orrin Hatch (R-Utah) remarks in the American Spectator, that so little attention ordinarily is paid to judicial nomination. Federal judges serve "during good behavior," which is to say that federal judges serve for life. In the whole history of the judiciary, only nine judges have been impeached and only four have been convicted. Virtually all of the judges nominated by President Carter in recent months will be sitting into the next century.

Who are these powerful individuals? We know far less about them than we know about the typical senator, who serves for six years, or the typical representative, who serves for two. Nominations to the federal bench go to the Senate Judiciary Committee for confirmation hearings.

"There is usually no press and no audience," Hatch remarks, "just a few bored staff members and one or two senators. A court stenographer records the desultory exchanges. Sometimes six or seven nominees are processed by the committee within an hour. Barring unforeseen developments, these nominations are approved by the committee without debate, by a voice vote, and reported to the full Senate, where they are approved finally under similar circumstances."

The judges thus casually entrenched for life are the products of an essentially political process. It is an exercise in naivete to pretend otherwise. From the time George Washington set up the first Supreme Court to the present day, political considerations always have played a part—and this is especially true of nominations to the district courts and the circuit courts.

The political considerations come in two varieties: plain politics and ideological politics. Judges are nominated to reward the faithful, to curry favor with influential senators and to win the support of such voting blocs as blacks, Spanish-Americans, Jews and Catholics. But judges are also appointed to further the political philosophy of the appointing President. Richard Nixon wanted stout conservatives; Jimmy Carter, by contrast, wants activist liberals.

To a degree not widely understood, Carter is having his way. Under the Omnibus Judgeship Act of 1978, he has been able to name 117 new district judges and 35 additional circuit judges. Before his term expires in January, the President will have nominated nearly half of all our federal judges. According to a study by the American Judicature Society, only 3% of his nominees view themselves as "conservative." Virtually all the rest are Democrats who identify their views as moderate, liberal or very liberal. They tend to regard the Constitution as a "flexible" document, to be stretched and shaped to accommodate "the evolving needs of society."

Toward the end of his life, Thomas Jefferson turned away from the idea of a judiciary with life tenure. He favored amendment to provide for specific terms on the bench. Considering the power now exercised by judges—power that is for most purposes unrestrained—I am more and more persuaded that Jefferson's view is sound. Assuming the appointment of judges who are political in every sense, it makes sense to contrive political restraints upon them.

—

James J. Kilpatrick writes a syndicated column in Washington.

Judges, Lawyers Are the Ruling Class in U.S. Society

By Alain Clement
To Hande Poste

NEW YORK.—For a European, America seems suddenly a nation of lawyers, where judicial power and thought dominate a moribund political culture.

So many of the country's 450,000 lawyers have access to or actually possess political power that they best approximate, in this heterogeneous society, the European concept of a ruling class.

The American ratio of lawyers to population—one for every 500 inhabitants, not to mention one for every 200 in New York—is three times greater than Great Britain's, four more than West Germany's and 21 more than Japan's.

"Too many Americans," it has been said, "prevent to the count the frustrations and difficulties that they would formerly have attributed to the imperfections of society. Here, again, the figures are eloquent: 40 percent of the population have engaged in litigation.

Diverse causes explain the growth of the cost actions named in America. One could be called the devaluing of the future. In 1911, the Russian political scientist Moise Ostrogorski wrote: "Confident of the future, Americans manifest a remarkable endurance in an unhappy present, a submissive patience that is willing to bargain about not only civic rights, but even the rights of man."

Today, the individual, pushed by the competing demands of society, seeks immediate satisfaction of real or supposed rights.

Would the American go to court so often if he felt better supported by a network of friends and family ties? The American family is not "nuclear" as it was in past years. Family relations seem to run on a renewable contract—as evidenced by divorce statistics. Even the relationship of parents to children seems to borrow from the idea of a contract. A recent cartoon in The New Yorker shows a young boy taking leave of his father and saying to him, "Good-bye, Dad! It was an interesting experience being your son!"

A contrast comes from Japan, a country with a social fabric so closely woven that business and finance are seen as an extension of the family unit. Japan needs 21 times fewer lawyers than the United States.

The numerical progression of lawyers here also underlines this: Massachusetts in 1765, eleven years before the Revolutionary War, counted only fifty lawyers for a population of 250,000 persons. The community was still compact enough to impose its own decisions and suspicion of legal parasitism was still strong.

It has not entirely disappeared. On May 4, 1978 on the occasion of the 100th anniversary of the founding of the Los Angeles Bar, President Carter used acids his populist accents to denounce judicial greed, the slowness of justice manipulated by lawyers, of whom "80 percent are in the service of 10 percent of the population," leaving entire categories of interests insufficiently protected.

Carter also echoed complaints of incompetence aimed at lawyers who possess neither the skills nor the professional conscience of their predecessors. According to Chief Justice Warren Burger, 25 to 50 percent of U.S. lawyers misserve their clients by negligence or lack of interest.

More than half of America's lawyers have never and will never set foot in a courtroom. These are business lawyers who are the necessary go-between charged with large and small legal manoeuvers and are most often grouped in "law firms" of which the most extended join about 400 jurists distributed among 24 cities.

Although the income of these lawyers varies according to their services and fame, annual salaries from a minimum of $20,000 to 10 times that figure and more attains a total annual "turnover" of $25 billion. The profession exercises an attraction that does not diminish with time. In 15 years, the number of lawyers has tripled, while law students (125,000 in 1978) have tripled since 1963.

Truly, American lawyers come as close to being a "ruling class" as is possible in a country too vast and varied to produce one. Since Roosevelt, each president has had around him lawyer-confidants, so that Congress and state legislatures are dominated—even if less so than before—by a majority who come from the bar.

About 40,000 lawyers work in Washington, double the number 10 years ago. Eight of 12 cabinet members are lawyers, 8,000 participate in government. And when the White House needed to reorganize its staff, it brought in Lloyd Cutler, one of the most eminent representatives of the lawyer establishment of Washington.

The exceptional position of the American lawyer derives from the power of American judges. Their power in turn springs from their role in interpreting the Constitution. In Europe, and in France particularly, the application of a law depends on subsequent administrative measures, which can limit or restrict "the intent of the legislator."

But in the United States administrative measures are only one element of the tracing back to the intent of the legislative text. Judges, in specific decisions, give to the legislative text. Judges, in specific decisions, give to the legislative history the force of law.

The judge writes the clear and unequivocal version of most American laws, which are often conceived and voted in disorder.

American opinion and its agencies understand this: the newspapers devote a large coverage of decisions of the federal judiciary, while they still do not know how to clarify the mysteries of the Congress, which remains impenetrable to ordinary mortals. Coverage of the Supreme Court earns attention and awards. The public here acts as if Congress decided nothing.

Is it because it is an untouchable that the American political system is not the subject of a single original work? The "prosperity of American "political science" is not able to hide that American political thought is at the point of death. But the nation's judicial achievements testify to a pulsing vitality.

Omitting the purely technical literature, constitutional history adds each year works of value, a general exchange of ideas that goes to the very foundations of law. You would have to cite a dozen titles to be fair, but that one work to ordinate as "A Theory of Justice," by John Rawls, in new in paperback indicates that its audience exceeds the circle of specialists in the philosophy of law.

This modern view of the categorial imperative has engendered a whole literature of commentary. The same is true for the work of Laurence Tribe, "American Constitutional Law," a broad dialectic of the development of jurisprudence in the Supreme Court since its beginning.

What do these differing repercussions mean, this advance of the judiciary over the body politic? Most of all, it is an exact reversal of that we are used to in Europe. On the Old Continent, the Napoleonic formula of political as a destiny remains valid.

Whether it is seen as "political" or not, politics affects our lives directly, by the incessant discourse of its practitioners and by the administrative framework of the citizen's life. We are touched by the justice only in cases of disturbances of the community, divorce and serious crime. Politics remains the routine, the judiciary the exception.

In the United States, the judiciary leads. It legitimizes the laws and gains control through them. It intervenes on all levels and at all times.

The judiciary puts the community in order with itself. Politics is at most the superfluous, the hazardous, the eccentric.

Hence the weak voting turnout. Hence the perpetual threat of a presidential election drawn out for months.

But also, it is the equality of conditions of life—the driving force, according to Tocqueville, of the American democracy—that works for this primacy of justice.

A Series
Of Occasional Dispatches
On American Topics
Written From A Foreign Perspective

The ratio of lawyers to population is three times greater than Britain's.

Greek Nun Jailed For Smoking Hash

Agence France-Presse

ATHENS, Aug. 21—A 60-year-old nun was in jail in the northern town of Patras today after her superior at the Papadhiotis convent there found her smoking hashish in her room.

Sister Plathee is altered to have grown the Indian Hemp in the convent garden. She told the police at Patras that she took hashish because it help her "participate" more in her prayers.

But she has denied planting the hemp herself, Sister Plathee maintains that it was "God's breezes" which blew the seeds into the convent where they took root. "It was simply by chance that I tried it without knowing what I was doing," she told police.

Sister Plathee is due to appear in court soon on charges of "cultivation and use of drugs" which carry a sentence of up to 20 years in prison.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November, 1980 I served the within Petition for Writ of Certiorari on the interested parties in said action , by placing 3 true correct copies in each of 3 sealed envelopes, with postage thereon fully prepaid and certified with a certificate of mailing in the United States Mail at Santa Monica, California addressed as follows:

The State of California, (3 copies)
Department of Transportation,
Legal Division,
Suite 500,
120 South Spring Street,
Los Angeles, California 90012

Los Angeles Superior Court (1 copy)
Judge Leon Savitch
North Hill Street,
Los Angeles, California

Court of Appeal (1 copy)
Second District,
3580 Wilshire
Suite 301
Los Angeles, Calif. 90010

Attorney General of California (1 copy)
555 Capitol Mall
Sacramento , California

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.
Executed on November 4, 1980 at Santa Monica, Calif.

Jim Carney
JIM CARNEY

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)ss

On the 4th day of November 1980 personally appeared *JIM CARNEY** who acknowledged that he executed the same.
WITNESS my hand and official seal.

Ernett Allen

OFFICIAL SEAL
ERNETT ALLEN
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires June 14, 1983